

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN THE MATTER OF:
RODNEY W. SIMMONS,

Debtor(s)

Case No: B-1180037 C-13D

OBJECTION BY STANDING TRUSTEE TO CONFIRMATION OF PLAN

NOW COMES Richard M. Hutson, II, Standing Trustee (“Trustee”) and respectfully objects to confirmation of the Debtor’s plan pursuant to 11 U.S.C. §1325 and shows unto the Court the following:

1. The Debtor filed a petition under Title 11 of the United States Code, Chapter 13, on January 7, 2011, in the United States Bankruptcy Court for the Middle District of North Carolina.
2. On January 7, 2011, Richard M. Hutson, II, was appointed as Trustee.
3. This Court has proper and personal jurisdiction of the subject matter hereof and over the parties pursuant to 28 U.S.C. §§151, 157 and 1334, and the Standing Order entered by the United States District Court for the Middle District of North Carolina and this is a core proceeding within 28 U.S.C. §157(b).
4. The plan filed by the Debtor proposes a monthly payment of \$477.00 for a period of at least 36 months. Unsecured creditors will not receive any dividend.
5. The Debtor’s plan provides that the claim of Hart Acquisitions secured by a 1996 Dodge truck (“the truck”) shall be allowed as a fully secured claim in the amount of \$6,127.36 with interest at the rate of 5.25% per annum and payable in monthly installments of \$127.65.
6. The Debtor’s plan provides that the claim of North State Acceptance (“North State”) secured by a 2006 Cadillac shall be allowed as fully secured in the amount of \$12,277.57 with interest at the rate of 5.25% per annum and payable in monthly installments of \$256.00.
7. The Debtor’s plan provides that the claim of Santander secured by a 2005 Ford shall be allowed as secured to a value of \$2,620.00 with interest at the rate of 5.25% per annum and payable in monthly installments of \$55.26.

8. The Trustee objects to confirmation of the plan in that the Debtor's proposed plan payments are not sufficient to satisfy the secured debt payments to Hart Acquisitions, Santander and North State, and all other secured or priority claims within the 60 month time limitation of 11 U.S.C. §1322(d).

WHEREFORE, the Trustee prays the Court for an Order as follows:

1. That the Debtor's plan not be confirmed in that the plan does not comply with 11 U.S.C. §1325 and the case be dismissed for cause pursuant to 11 U.S.C. §1307;
2. That, in the alternative, the Debtor's plan payments be increased to \$522.00 per month; or
3. For such other and further relief as the Court may deem just or proper.

This the 1st day of March, 2011.

/s/ Benjamin E. Lovell
Benjamin E. Lovell
Attorney for the Trustee
State Bar No: 23266
P.O. Box 3613
Durham, N.C. 27702

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing document upon John T. Orcutt, Esq., 6616-203 Six Forks Rd., Raleigh, NC 27615, Rodney W. Simmons, 2805A Ashe St., Durham, NC 27703, and Michael D. West, Esq., U.S. Bankruptcy Administrator, PO Box 1828, Greensboro, NC 27402 by depositing a copy of same in the United States Mail, postage prepaid, and in the manner prescribed by Rule 5 of the Federal Rules of Civil Procedure.

This 1st day of March 2011.

s/Benjamin E. Lovell
Benjamin E. Lovell, Esq.
Attorney for the Standing Trustee